HARVEY A. CLIFTON

IBLA 83-73 Decided April 3, 1984

Appeal from decision of the Colorado State Office, Bureau of Land Management, rejecting mineral patent application in part. C-29362.

Affirmed.

1. Mining Claims: Possessory Right--Mining Claims: Title

The Department does not have jurisdiction to consider the relative superiority of the possessory rights of rival mineral claimants to the same ground. A final decision by a court of competent jurisdiction resolves all questions regarding such conflicting rights.

APPEARANCES: Harvey A. Clifton, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Harvey A. Clifton has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated September 10, 1982, rejecting his mineral patent application, C-29362, in part. On November 21, 1979, appellant filed a mineral patent application for land situated in secs. 16 and 17, T. 3 S., R. 72 W., sixth principal meridian, Gilpin County, Colorado. The land was surveyed under Mineral Survey 20898 A and B, approved October 26, 1979. The patent application covers the Perseverance lode mining claim, located September 9, 1968, and the Perseverance millsite claim, located January 31, 1977.

On July 28, 1977, Stancil Couch filed a mineral patent application, C-25743, for land situated in secs. 17 and 18, T. 3 S., R. 72 W., sixth principal meridian, Gilpin County, Colorado. The patent application covers the Couch placer mining claim, located August 11, 1960. On October 6, 1977, Stancil Couch filed a mineral patent application for land situated in sec. 17, T. 3 S., R. 72 W., sixth principal meridian, Gilpin County, Colorado. The patent application covers the Victoria #2 lode mining claim, located September 18, 1968. By letter dated March 9, 1978, BLM informed appellant that both the Couch and Victoria #2 mining claims would be included in patent application C-25743. By deed dated October 7, 1980, Stancil Couch in part transferred his interest in the Couch and Victoria #2 mining claims to Lee J. Peterson.

On June 22, 1982, Lee J. Peterson filed an adverse claim against appellant's mineral patent application pursuant to 43 CFR Subpart 3871, contending that portions of the Perseverance mining and millsite claims were included in various mining claims owned by Peterson, including the Couch and Victoria #2 mining claims. 1/ Peterson relied on state court decisions in the case of Couch v. Clifton, which ruled on the priority of all of the claims. 2/ On May 21, 1979, the District Court, Gilpin County, Colorado, issued "Findings of Fact, Conclusions of Law, and Judgment" in Couch v. Clifton, Civil Action No. 6064 which held in part, at page 7, that the Couch, Victoria, Victoria #2, and Virginia mining claims were "superior to all of the Clifton claims insofar as these claims conflict with one another." In addition, the court held, at page 8, that the Perseverance millsite claim was void because it was placed on mineral land and "in part on Couch Number 1 property." This judgment was affirmed by the Colorado Court of Appeals in Couch v. Clifton, 626 P.2d 731 (Colo. App. 1981), and no further appeal was taken during the appeal period. In accordance with 43 CFR 3871.5(a), Peterson filed with BLM certified copies of the court decisions and a certificate of the Clerk of the Colorado Court of Appeals that the time for an appeal had expired and that no appeal had been filed. In its September 1982 decision, BLM held that, in view of the state court decisions, appellant's "patent application is dismissed as to the Perseverance Millsite and to that part of the Perseverance Lode Claim lying southwest of Highway 119" (Decision at 2). 3/

In his statement of reasons for appeal, appellant contends that the Couch mining claim is null and void because the "original" certificate of location was determined to be a "floating claim" and therefore defective and a "relocation" certificate was filed with BLM on March 15, 1977, after location of the Perseverance mining claim. Appellant argues that the March 1977 certificate of location takes in land "described on the original Placers #1 and #2." In addition, appellant contends that the Couch mining claim has been "worked-out" and that a tourist business has been operating on the site of the claim. With respect to the Victoria #2 mining claim, appellant states that it was located after the Perseverance mining claim and that no development or assessment work has been done on the claim or the Victoria mining claim. Finally, appellant argues that Couch never answered a question of citizenship as required in an earlier BLM decision, that the transfer from Couch to Peterson was not timely recorded with BLM, and that Couch did not pursue his patent application with reasonable diligence.

[1] BLM does not have the authority to consider the relative superiority of the possessory rights of the two adverse mineral claimants, appellant and Lee J. Peterson, successor in interest to Stancil Couch. John W.

1/ Peterson is Couch's successor in interest to these two claims.

2/ The other claims owned by Peterson and considered by the court in Couch v. Clifton are the Victoria lode mining claim and the Virginia lode mining claim. In addition, the court considered the Perseverance #1 and #2 lode mining claims owned by appellant.

3/ In Couch v. Clifton, at page 8, the district court concluded appellant was "entitled to nothing on the southwesterly side of Highway 119."

Pope, 17 IBLA 73 (1974); see 43 CFR 3871.3. That question was properly addressed by the Colorado State Courts in Couch v. Clifton, in accordance with 30 U.S.C. § 30 (1976). That litigation concluded that Couch had superior rights by virtue of filing a certificate of location and occupying the land. Those questions raised by appellant concerning possessory rights have been answered by the litigation in Couch v. Clifton.

BLM, however, can address questions regarding the right to a patent under patent application C-25743. Essex International, Inc., 15 IBLA 232, 242, 81 I.D. 187, 192 (1974), and cases cited therein. In such circumstances, the present appeal would be treated as a protest pursuant to 43 CFR 3872.1, which should be addressed by BLM in the first instance. See 43 CFR 3872.1(b); Lee Bros., 79 IBLA 330 (1984).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Wm. Philip Horton
Chief Administrative Judge